

Chapter 11 – Procurement Procedures

A. Introduction

Procurement requirements differ depending on who is doing the procurement. This section outlines requirements that must be followed when procuring all materials, supplies, equipment, and construction or professional services. The majority of the Chapter discusses the requirements for municipalities: cities, towns, and counties and not for profit agencies. The second portion of the chapter outlines the requirements for securing the use of administrative services from either the staff of the award recipient, and subrecipient or a contractor. The last section discusses required contract provisions, cost price analysis, retainage and bonding requirements, conflict of interest, retention and debarment procedures.

Any procurement action that takes place for the award *regardless of the funding source* must follow the procurement process outlined in this chapter, e.g. matching funds will be used to pay for the architectural services which must be procured using one of the approved methods that follow.

B. Procurement by Local Units of Governments

If a local unit of government is the recipient of the CDBG or HOME award, the local unit of government's procurement standards must be used in *all* phases of procurement. Always consult with the award recipient's legal counsel prior to initiating procurement activities.

The most stringent procurement standard applies to procurement by cities, towns, and counties. Both state and federal law govern this type of procurement. These standards apply whether procurement is performed by staff, a subrecipient, or a contractor of the municipality receiving the funds.

1. Federal Regulations

- a. CFR Part 85 (located at <http://www.access.gpo.gov/nara/cfr/>)
- b. OMB Circular A-102 (located at <http://www.whitehouse.gov/omb/>)
- c. OMB Circular A-87 (located at <http://www.whitehouse.gov/omb/>)

2. Indiana Procurement Laws (applicable to cities, towns, and counties)

- a. Public Purchases Law - materials, equipment, goods and supplies IC-36-1-9.
- b. Public Works Law - Construction, alteration, or repair of any public building or any other work or improvement of any character IC-36-1-12.

3. Procurement Responsibility

Municipalities must designate a purchasing officer for CDBG or HOME purchases and procurement activities. Written procurement procedures should be in place. Small communities may rely on the community's engineer, consultant, building inspector, public works director, or legal counsel to assist in the procurement process. The purchasing officer is responsible for the following:

- a. Determining the need for procurement of supplies, equipment, construction or, services based on the project plan.
- b. Assigning appropriate persons to prepare specifications, manage solicitations, and negotiate contract terms.

- c. Monitoring solicitation of bids including preparation of bid specifications, advertising, receipt, and evaluation of bids.
 - d. Participating in the final selection of contractors.
 - e. Overseeing pre-construction activities and negotiations.
 - f. Overseeing the execution of contracts.
 - g. Determining that the purchase is in compliance with the conflict-of-interest requirement: no member, officer, or employee of the award recipient or its designees or agents, no member of the governing body of the locality in which the program in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during their tenure, or for one year thereafter, shall have any direct or indirect interest in any contract, subcontract, or proceeds thereof, financed in whole or in part with CDBG or HOME funds.
4. All construction contracts procured by a local unit of government must be through the competitive sealed bid method. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.
 5. Procurement of materials and supplies estimated to be in excess of \$25,000 must be procured through the competitive sealed bid method. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.
 6. Professional services over \$25,000, such as engineering or consulting services, must be procured by the competitive negotiation method if the competitive sealed bid method is not used. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.

Local Unit of Government Procurement Methods

There are four (4) allowable methods of procurement: 1) competitive sealed bids, 2) competitive negotiation, 3) small purchases, 4) noncompetitive and sole source purchases. A synopsis of the methods and requirements follows; however, this information should not be considered a substitute for reviewing the applicable state laws and federal circulars.

1. Competitive Sealed Bids (Invitation For Bids)

Competitive sealed bids are solicited through formal advertising. A fixed price contract is awarded to the lowest responsible bidder whose bid conforms to all the material terms and conditions of the bid invitation, technical specifications, and is the lowest in price. The contract award may be a fixed sum, or a unit price with ceiling, but it **cannot be a cost plus percentage of cost contract**. Such contracts are not allowed under federal regulations.

When using competitive sealed bids, the Award recipient must provide all prospective bidders with a competitive description of the items or services to be purchased. This description should avoid specific brand requirements, although “brand name or equal” descriptions may be used as an example of functional or quality requirements. The procurement must lend itself to a firm fixed price contract that allows selection of a successful bidder primarily on price.

In addition, two or more responsible vendors must be willing and able to compete for the contract. If only one bid is received the award recipient must perform a “cost-price analysis” to

substantiate the reasonableness of the bid price received (See Subsection I Cost-Price Analysis). Award recipients should consult IHFA about requirements for cost-price analysis.

1. Preparation of the technical bid specifications. These specifications should provide complete and accurate descriptions of materials, products, and services to be provided.

The specifications should address any concerns identified during the environmental review. A copy of all plans or diagrams showing the location of underground utilities must be included in the bid and contract documents. Where applicable, the architect or engineer must certify that handicapped access standards have been or will be satisfied, or specify the basis for exemption.

2. Prepare the CDBG or HOME bid terms and conditions.
3. If the project has been determined to require Davis-Bacon wages, secure the applicable wage rate decision(s) from your IHFA Compliance Specialist and include them in the bid documents and construction contracts. To obtain applicable wage rate decisions, the award recipient must submit the “Request for Wage Determination” form to IHFA. See sample form in the Labor Standards Chapter.
4. The award recipient’s attorney should review the bid documents for the following:
 - a. Technical specifications.
 - b. City, town, or county, as well as federal and state requirements.
 - c. CDBG or HOME related requirements.
 - d. Cost and pricing information.
 - e. Method of payment.
 - f. Advertisement for bid (as required by state law).
 - g. Bidders information specifying method of bidding, bid evaluation, and contract award.
 - h. Bid proposal form (Indiana General Form No. 96) required for public works projects with contracts to exceed \$100,000.
 - i. Contract form.
 - j. Bonding forms (bid, performance, and payment bonds), if applicable
 - k. Standards questionnaires and Financial Statement for Bidders (Indiana General Form No. 96A) required for public works projects with contracts to exceed \$100,000.
5. Bids must be published at least 14 days before the bid is due. The bid must be published twice in a general circulation at least seven days apart, and the second ad must be published seven days before bids are opened [public advertisement requirements are detailed under Indiana Law I.C. 5-3-1-2(e)].
 - a. Include the date and place fixed for receiving bids.
 - b. It should also include bonding and certification requirements and the place where plans and specifications are available for public review.
 - c. For Davis-Bacon projects, the current prevailing federal wage publication must be incorporated on the notice for all applicable procurement (See Labor Standards Chapter).
 - d. Require all bidders to submit, on prescribed state forms, required financial statements, a statement(s) of experience, proposed plans for performing the work and equipment available.

6. **Preparation of a Bidder's List** - Award recipients, in order to alleviate the publication requirement each time projects go out to bid, may want to create a bidders list. To create a bidders list, the award recipient must publish at least twice in a newspaper of general local circulation. The advertisements must be at least seven days apart, with the second publication made at least seven (7) days before the deadline for submitting a request to be placed on the bidder's list [public advertisement requirements are detailed under Indiana Law I.C. 5-3-1-2(e)]. The advertisement must specify any requirements contractors must satisfy in order to be placed on the bidders list. These requirements may include, but are not limited to, the submission of financial statements, statements of experience, proposed plans for performing the work, documentation of insurance, licensing, and/or bonding, and equipment available.

Each time an owner occupied home or rental home (every procurement activity) goes out to bid, the award recipient must notify all contractors on the bidders list, as well as document efforts to solicit minority and women owned business enterprises. The notification should inform contractors where bid documents are available for review. At any point in time, a contractor may request to be placed on or deleted from the bidders list. Additionally, the bidders list should be updated every six months. To update the bidders list, the recipient should follow the publication requirements as well as contact non-responsive contractors that are on the bidders list to see if they would like to remain on the bidders list.

7. Efforts must be made (and documented) to attract proposals from small businesses, minority-owned businesses, and women's business enterprises. IHFA can provide a directory of such enterprises. IHFA has a ten percent (10%) goal for participation by such firms in CDBG or HOME-funded projects.
8. For Davis-Bacon projects, the award recipient must conduct a pre-bid conference (See Labor Standards Chapter 8).
9. Maintain a log of bidders who were sent or submitted bid documents.
10. Amendments to the bid documents, including those revisions of wage rate decisions must be sent to all potential bidders who obtained the original bid documents. Amendments can be issued up to 72 hours prior to bid opening; if amendments are not issued within 72 hours prior to the bid opening, the date must be extended exactly one (1) week.
11. All bids received during the bidding period must be logged with the name of the bidder and the time and date of receipt. The sealed bids must be secured unopened in a safe place. **No bid should be accepted if it is late.**
12. A public meeting must be held to open all bids except for projects on privately owned property. All bids should be read aloud during this meeting. Maintain minutes of the meeting to document the project, time, and date of the bid opening, and the bidders and bid amounts in the order they were opened. A bid tabulation sheet must be completed showing the name and bid price of each bidder, and whether the bid was responsive.

Where procurement is done on behalf of an individual, the bid opening should include the property owner and a representative of the award recipient or not-for-profit subrecipient. Formal minutes are not required, but meeting notes are recommended. A bid tabulation

sheet must be completed showing the name and bid price of each bidder, and whether the bid was responsive.

13. Review all bids to determine if they are legally and technically responsive. Bidders must be evaluated on their ability to perform. The award recipient should consider the integrity, experience, performance history, and capacity of the contractor to perform within the stated time period, as well as cost when making the decision.

The award recipient has 60 days from the date of bid opening to (a) award the contract or reject all bids or, (b) reject all bids. The contract must be awarded to the lowest, most responsive, and responsible bidder. Notice to proceed must also be provided to the successful bidder within sixty (60) days of bid opening (IC 36-1-12-6). If the award recipient awards a contract to any vendor other than the lowest bidder, the award recipient must document in detail the reasons for not accepting the lowest bid price submitted.

If all the bids exceed the amount budgeted for the project, the award recipient cannot negotiate with the low bidder to bring the contract within the budget limits. The award recipient can reject all bids, provide needed funds from other sources, or re-allocate CDBG or HOME funds. However, prior to a re-allocation of CDBG or HOME funds, the award recipient may need to submit an award modification request to IHFA for approval (See Modifications, Chapter 16).

If the award recipient has reason to believe that available funds are likely to be inadequate for the full scope of work proposed, the award recipient should ask all bidders to submit deductible alternatives to the project can proceed without a second bid solicitation. If deductible alternatives are requested, the document must specify the method and order in which deductible alternatives will be applied in determining the low bid. Drawings must clearly show the deductible alternative(s).

14. **Prior to contract award, the award recipient must obtain verification of the contractor's eligibility from the appropriate IHFA Compliance Specialist.**
15. **Prior to contract award, the award recipient must ensure all compliance and environmental clearances have been met. Contracts should not be executed until the award recipient receives both a written notice of Release of Funds from IHFA for the applicable budget line item and written notice from DHPA that the Section 106 Review Process has been completed (refer to the IHFA Application Package for Environmental Review information). Failure to comply with these release procedures may result in disallowance of all applicable costs.**
16. Award the contract. Contracts for work on public facilities and improvements must be awarded in a public meeting. The contract must be awarded to the lowest, most responsive, and responsible bidder. If the contract was not awarded to the lowest bidder, a detailed, written explanation must be prepared.
17. The contract prepared must include the following general administrative provisions:
 - a. Effective date of contract.
 - b. Names and addresses of award recipient and contractor.
 - c. Names of representatives of award recipient and contractor who will act as liaison for administration of the contract.

- d. Citation of the authority of the award recipient under which the contract is entered into and the source of funds.
 - e. Conditions and terms under which the contract may be terminated by either party and remedies for violation or breach of contract.
 - f. All required conditions under CDBG or HOME regulations for third-party contracts.
18. All contracts paid from CDBG or HOME funds must include the following scope of services:
- a. Detailed description of the extent and character of the work to be performed.
 - b. Time for performance and completion of contract services, including project milestones, if any.
 - c. Specification of materials or other services to be provided by both parties, (e.g., maps, reports, printing, etc.).
 - d. Access to Records Clause.
 - e. Conflict of Interest Clause.
19. Contracts must incorporate provisions for compensation, including the basis for submission of billings and specification of the total contract amount.
20. The contract must be executed by both the award recipient and the successful bidder. Unsuccessful bidders must be promptly notified. The successful bidder must meet all bonding requirements prescribed by Indiana law (see “Bonding Requirements” later in this chapter). Award recipients should seek the assistance of legal counsel in regard to bonding requirements.
21. Where the project is covered by Davis-Bacon wage rates (CDBG - 8 or more units or public facility; HOME - 12 or more units), the Award recipient must send a “Notice of Contract Award” to the IHFA Labor Standards Officer and to the Department of Labor (DOL) area office within ten (10) days of contract award. Copies should also be retained by the award recipient in its project files. This information must also be filed by the contractors for all subcontracts over \$10,000.
22. For Davis-Bacon projects, a pre-construction conference must be held to acquaint the contractor with federal requirements. IHFA staff will brief the contractor on the payment process, federal wage requirements, minority/women business development goals, forms to be used and how the award recipient may use this meeting, or a similar one, to review the contractor’s records and accounting systems. Pre-construction conference minutes must be prepared to document the subjects discussed at the meeting. A list of federal regulations pertinent to procuring and managing CDBG or HOME construction contracts can be found in the Labor Standards Chapter. This list may serve as the agenda for the pre-construction conference.
- Pre-construction conferences are also recommended, but not required, for non-Davis-Bacon projects.*
23. Establish a contract file containing the following:
- a. Description of contractor selection method.
 - b. All bids received.
 - c. Bid tabulation.

- d. Verification of contractor eligibility.
- e. Contract for services.
- f. Records of progress payments, including retainage.
- g. Contract change orders, if any.

The Award recipient should use this file to monitor the contractor throughout the construction period.

- 24. Send a “Notice to Proceed” to the contractor. This document notifies the contractor that construction may begin.
- 25. For Davis-Bacon projects, send a “Notice of Start of Construction” to IHFA Labor Standards Officer (See Labor Standards Chapter).
- 26. The following additional state regulations govern construction services related to public improvements:
 - a) If construction or alternation of any public building is estimated to cost more than \$50,000, work must be performed pursuant to and in compliance with plans and specifications approved by a licensed architect or engineer (IC 36-1-12-7).
 - b) A municipal utility may maintain, extend, and install services without adopting plans and specifications and without awarding a contract, if such work is performed by the employees of such utility. However, the award recipient must coordinate such “force account” with IHFA, and all applicable federal wage requirements must be followed.

2. **Competitive Negotiation Procedure**

The competitive negotiation method is recommended for all procurement of professional services.

The procurer prepares a formal Request for Proposals (RFP) and requests proposals from at least two (2) or more qualified firms or individuals. Negotiations should be conducted with more than one of the responding sources.

If competitive negotiation is used, the following requirements apply:

- a. Preparation of Request for Proposals (RFP). The RFP should include these elements, at a minimum:
 - (1) Scope of Services - detailed description of the extend and type of work to be performed.
 - (2) Time Requirements - performance period.
 - (3) Considerations for Bidding - any additional requirements not pertaining to the scope of services that would be considered when preparing a proposal.
 - (4) Proposal Instructions - the format of the proposal.
 - (5) Evaluation of Proposals - The award recipient must identify all significant evaluation factors (and their relative importance), including price or cost where required, technical expertise, past experience, price, staffing, etc. and how the proposals received will be scored.
 - (6) Federal, state, and local regulations applicable to the award.

- b. **The RFP must not be prepared or solicited by those firms or individuals who will be submitting proposals.**
- c. Proposals must be solicited from at least two qualified sources to permit reasonable competition. Efforts must be made (and documented) to attract proposals from small businesses, minority-owned businesses, and women's business enterprises. You may get this directory from www.in.gov/idoa/minority/mbdirectory.html. IHFA has a ten percent (10%) goal for participation by such firms in CDBG or HOME-funded projects.
- d. The RFP must be publicized and reasonable requests by competing sources must be honored to the maximum extent possible. The award recipient must retain documentation of the RFP distribution process.
- e. Evaluation of Proposals. When proposals or statements of qualification are received, they should be evaluated by the award recipient based upon pre-established criteria. Evaluation criteria commonly used include the following, at a minimum:
 - (1) Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
 - (2) Past record of performance on such CDBG or HOME-funded contracts within the State of Indiana, and a list of other clients served including type of work, timeliness, quality requirements, and cost control. References submitted by interested bidders should be contacted.
 - (3) Capacity of the firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
 - (4) Familiarity of the firm with the type of problems applicable to the project.
 - (5) Price. *(The method, where price is not used as a selection factor, can only be used in procurement of architectural and engineering professional services. It cannot be used to purchase other types of services though architectural and engineering firms are a potential source to perform the proposed effort.)*
- f. The review process for both statements of qualification and proposals in response to a Request for Proposal should be thorough, uniform, and well-documented. The review process is to be conducted by a committee or board which, to the greatest extent possible, includes persons with the appropriate technical skills. Reviewers must have no conflicts of interest with the firms or individuals under review, such as family relationship, close friendship or business partnerships.
- g. Negotiations should be conducted with more than one of the sources submitting proposals. Retain verifiable documentation recording the negotiations process.
- h. Award must be made to the responsible offeror whose proposal will be the most advantageous to the project, considering price and other factors. Unsuccessful bidders must be promptly notified. When the award is made to a responsible bidder not having the lowest price, the award recipient must document its reasons for not selecting the lowest proposed price.
- i. The award recipient must then establish a contract file that contains the following:
 - 1. A description of the method used to select architect, engineer, or consultant.
 - 2. Qualification statements or proposals received.

3. Negotiation methods.
4. Cost and pricing data supporting the contract.
5. Verification of contractor eligibility.
6. Contract for services.
7. Records of progress payments including retainage withheld.
8. Contract change orders, if any.

3. **Small Purchases Procedures: For services and supplies ONLY not construction contracts**

Small purchase procedures are those relatively simple and informal procurement methods appropriate for procurement of services, supplies, or other property, costing not more than \$25,000.

- a. **Services Under \$25,000** - Although competitive negotiation is the recommended method for procuring all professional services, the small purchase procedure is also acceptable.

- (1) At a minimum, two quotes shall be reviewed from qualified, responsible firms.
- (2) At a minimum one quote attempt must be documented from an MBE/WBE firm.
- (3) Receipt of these price quotes must be well-documented and a record of the procedure used must be maintained by the award recipient.
- (4) If a firm is selected on a basis other than price, the reason for the selection must be well-documented and maintained by the award recipient.

- b. **Supplies and Materials Under \$25,000** - When the small purchases method is used for procuring supplies and materials, the award recipient may purchase on the open market or may invite quotes from not less than two vendors.

If the Award recipient purchases on the open market, at least two informal price quotations should be obtained using the "Informal Price Quotation Form" (Exhibit A). If the Award recipient chooses to invite formal quotes, a "Request for Quotation Form" (Exhibit B) should be completed.

4. **Non-Competitive and Sole Source Purchases:**

Competitive procurement should be used whenever possible. Non-competitive proposals may be used only when the other three methods are not feasible; award files must document such a determination. This method shortens the procurement process; however, there must still be written bid specifications for construction and scope of services for professional service contracts.

Non-competitive negotiation may only be used in one of the following circumstances:

- a. Public urgency will not permit a delay for competitive solicitation.
- b. The item desired is available from only one source.
- c. After solicitation of a number of sources, competition is determined inadequate.

Any community wishing to utilize sole source procurement must first obtain approval from IHFA. This can be accomplished by sending a letter that details the efforts undertaken to obtain multiple bids and the reason sole source procurement was selected. Sole source procurement is discouraged and must be well documented to avoid denial or disallowance by IHFA staff and Indiana State Board of Accounts examiners.

C. Procurement by Not-for-Profit Agencies

If the not-for-profit is the recipient of the CDBG or HOME award, the not-for-profit may choose to utilize their own procurement standards or follow the local unit of government's procedures. However, if the not-for-profit chooses to utilize the not-for-profit procurement standards, the standards must be approved by IHFA. IHFA strongly encourages not-for-profits to consult with their legal counsel when writing their procurement standards.

Procurement by not-for-profit entities is governed by OMB Circular A-110 and must comply with following standards as given in OMB Circular A-110 as explained below.

If a not-for-profit does not have written procurement standards in place, or if the not-for-profit's procurement standards do not meet the requirements of OMB Circular A-110, then the not-for-profit must then follow the procurement requirements of local units of government as given in Section B.

Prior to Not-For-Profit utilizing procurement standards, your IHFA Compliance Monitor must approve the procurement standards.

1. Purpose of Procurement Standards

Procurement standards establish procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

2. Non-Profit Responsibilities

The non-profit is the responsible authority, without recourse to IHFA or HUD, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims and/or protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of statute are to be referred to IHFA.

3. Codes of Conduct

The non-profit shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

The officers, employees, and agents of the non-profit shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, non-profits may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-profit.

4. Competition

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The non-profit shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals, shall be excluded from competing for such procurements.

Awards shall be made to the bidder whose bid or offer is responsive to the non-profit, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the non-profit. Any and all bids or offers may be rejected when it is in the non-profit's interest to do so.

5. Procurement Procedures

- (a) All non-profits shall establish written procurement procedures. These procedures shall provide for, at a minimum, that (1), (2), and (3) apply.
 - (1) The non-profit shall avoid purchasing unnecessary items.
 - (2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
 - (3) Solicitations for goods and services provide for all of the following.
 - (i) A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - (ii) Requirements which the bidder must fulfill and all other factors to be used in evaluating bids or proposals.
 - (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable standards.
 - (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
 - (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (b) Positive efforts shall be made by non-profits to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. The non-profit shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women-owned business enterprises are used to the fullest extent practicable.
 - (2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women-owned business enterprises.
 - (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women-owned business enterprises.
 - (4) Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Indiana Department of Administration's Minority Business Development Division in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.
- (c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the non-profit but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. **The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.**
- (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

6. Cost and Price Analysis

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocation ability, and allow ability.

7. Procurement Records

Procurement records and files for purchases in excess of the small purchase threshold (\$25,000) shall include the following, at a minimum:

- (a) Basis for contractor selection
- (b) Justification for lack of competition when competitive bids or offers are not obtained
- (c) Basis for award cost or price.

8. Contract Administration

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow-up of all purchases. Non-profits shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

D. Procurement by Private Individuals and Businesses

The majority of non-administrative procurement accomplished with award funds from IHFA will fall into this category. Private individuals and business associations (corporations, partnerships, sole proprietorships, etc.) are not usually subject to restrictions on purchases. However, because of the nature of the funds, some controls are required.

1. Grants to private individuals and business associations

The private individual or business association must follow the requirements for competitive procurement. However, such procurement may be by competitive negotiation and does not require publication. Proposals should be requested from at least two (2) qualified contractors which includes contacting at a minimum one MBE/WBE contractor based on written specifications for the proposed project.

The private individual or business association and the award administrator should open the sealed bids and select the “lowest and best” bid. All bids received must be kept for review by IHFA. If there is substantial deviation in bids (10% or more) and the lowest bid is not selected, the reason for non-selection must be noted in the file. Substantial deviation from the written bid specifications or inability to meet time constraints of the bid are acceptable reasons for non-selection. However, bid specifications must not have been so narrowly written as to preclude otherwise qualified bidders.

2. Loans to private individuals and business associations

This category applies only to loans which are scheduled for repayment. Loans which are “forgivable” must be treated as a grant for purposes of procurement. Private individuals and business associations must still follow the requirements for competitive procurement, as with grants. However, if the individual or business wishes to select a bid other than the “lowest and best,” they may pay the difference between the “lowest and best bid” received and the bid actually selected.

Where a private individual or business association wishes to select a contractor with which it has an ongoing relationship, using sole source procurement, a cost-price analysis must be done to ensure that the bid is in line with reasonable and customary charges for similar work.

E. Contractor Verification

Prior to bid award, you must verify that all contractors bidding on the project are not listed on the HUD Debarred list. To check the status, submit Exhibit C to the IHFA Compliance Assistant. Do not execute a contract until you have received written confirmation from IHFA that the entity is not on the HUD Debarred List.

F. Administrative and Other Professional Services

1. **Administrative Services by Staff of an award recipient**

A city, town, county, or not-for-profit award recipient may elect to perform some or all administrative and professional services functions in-house. The award recipient may be reimbursed for the direct costs of administrative and other professional services functions. All reimbursement payments must be made to the city, town, county, or not-for-profit's "force" account.

Award recipient employees may not be paid extra for performing award administration during the course of their standard work schedule. However, if an employee is selected to perform the services through a competitive procurement process, the services must be performed on their own time (not during regular work hours), and they may receive reimbursement above their standard salary.

2. **Administrative Services by a Subrecipient**

Many award are applied for on behalf of subrecipients. Subrecipients are governmental or private not-for-profit status entities, having federal not-for-profit status, that carry out the primary award activity. A governmental not-for-profit is a public agency that is independent of a local unit of government award recipient such as public housing authorities, neighborhood-based not-for-profit organizations, regional planning commissions, and local development corporations. An applicant may provide these subrecipients with CDBG or HOME funds for their use in carrying out agreed-upon eligible activities.

By agreement with the recipient city, town, or county, these entities may assume all administrative and professional services requirements of the award, if they are also operating the primary award activity. The subrecipient is reimbursed on a **direct cost basis** (costs actually incurred and so documented) only for costs that are reasonable and necessary to project administration.

Receipt of Funds by Subrecipients

1. In some instances, not-for-profit organizations qualify as direct recipients of HOME awards. In other cases, a not-for-profit entity may receive CDBG or HOME funds as either a subrecipient or a target of assistance.

Subrecipients are governmental or private not-for-profit entities having federal not-for-profit status. An applicant may provide these subrecipients with CDBG or HOME funds for their use in carrying out agreed upon eligible activities.

In contrast, a target of assistance is the owner of a project or property. For example, a not-for-profit organization could operate a housing rehabilitation program for senior citizens as a subrecipient. A not-for-profit, as a target of assistance, could receive funds to purchase and/or rehabilitate an apartment building that will house senior citizens.

In either instance, the community does not need to "procure" the not-for-profit. However, where a not-for-profit simply wishes to provide administrative services to the community, such services must be competitively procured. The critical distinction is whether the major award activity is within the normal course of activity for the not-for-profit.

2. There must be a contractual agreement between the award recipient and the not-for-profit. As a target of assistance, the not-for-profit is not treated any differently than any other private owner of real estate (See Section D).
3. As a subrecipient, there must be a subrecipient agreement executed that includes:
 - a. A statement of work describing the work to be performed, a schedule for completing the work, and a budget. These items must be described in sufficient detail to allow the award recipient (recipient governmental unit) to effectively monitor the subrecipient's performance;
 - b. A description of what records the subrecipient must keep and what records it must submit in order to assist the award recipient in meeting its record-keeping and reporting requirements;
 - c. A description of how any program income expected to be generated will be handled;
 - d. A statement of applicable uniform Administrative requirements such as Treasury Circulars A-110 and A-128;
 - e. A clause for suspension and termination of agreements for noncompliance and convenience;
 - f. A statement of reversion of CDBG or HOME-funded assets at the time the agreement expires;
 - g. A statement of any federally approved indirect cost allocation plans and the name of the approving cognizant agency(s);
 - h. A description of other program requirements such as labor standards, fair housing requirements, with the exceptions that subrecipients do not assume the award recipient's environmental responsibilities;
 - i. A copy of the not-for-profit's 501(c) tax exempt certification should be attached to the agreement.
4. The award recipient has the responsibility of monitoring its subrecipients. While IHFA does not prescribe how that monitoring should take place, we suggest that the Award recipient at least follow the monitoring guidelines found in Chapter 17 (Program Monitoring & Audit).
5. Ultimately, it is the award recipient (local unit of government) that will be held accountable for all aspects of award administration and program compliance.
6. Subrecipient not-for-profits may serve as the administrator for the award recipient without competition as long as the following conditions are met:
 - a. The subrecipient is also operating the funded housing activity; and
 - b. That activity is a usual and customary activity of the subrecipient;
7. Not-for-profit entities that wish to only provide administrative services whether to a award recipient or subrecipient, may only be procured through competitive bidding that meets the applicable requirements for the procurer.

3. **Administrative Services by a Contractor**

A contractor may be a for-profit entity, a not-for-profit, or a municipal employee. A contractor may perform administrative or professional services as a stand-alone activity or in conjunction with other activities.

The competitive negotiation method is recommended for all procurement of professional services, regardless of dollar amounts, and is required for all services contracts over \$25,000 if the competitive sealed bid method is not used.

Administrative and services costs may not be bid by “fixed price”, except for repetitive, low cost services such as legal opinions for title, or accounting review of proforma. All other procurement of services must be at an hourly rate, with an estimate of the number of hours required to accomplish the task. Different activities may be bid at different rates. Both the rates and the number of hours for the task must be available for review by the award recipient, subrecipient; IHFA, HUD, or their designated representatives.

G. *Required Contract Provisions*

1. All CDBG or HOME-funded contracts must include the following provisions:

- a) Effective date of contract.
- b) Names and addresses of award recipient or subrecipient and contractor.
- c) Names of representatives of award recipient or subrecipient and contractor who will act as liaison for administration of the contract.
- d) A citation of the authority of the award recipient under which the contract is entered into and the source of funds.
- e) Contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- f) Provisions for termination by the award recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- g) Scope of Services:
 - (1) Detailed description of extent and character of the work to be performed.
 - (2) Time for performance and completion of contract services, including project milestones, if any.
 - (3) Specification of materials or other services to be provided by both parties, (e.g., maps, reports, printing, etc.).
 - (4) An access to records clause including a provision that all negotiated contracts awarded by recipients shall include a provision to the effect that the state, the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
 - (5) A Conflict of Interest Clause.
 - (6) Provisions for compensation of services, including the basis for submission of billings as the work progresses and specification of the total contract amount.
- h) Bonding and Insurance Requirements, if applicable

- i) Federal Standards Provisions (See Exhibit D):
 - (1) Equal Employment Opportunity - Executive Order 11246: Equal Opportunity Clause, goals for female and minority participation and implementing regulations
 - (2) Rights to Inventions Made Under a Contract or Agreement
 - (3) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended
 - (4) Byrd Anti-Lobbying Amendment (31 U.S.C.1352)
 - (5) Debarment and Suspension (Executive Orders 12549 and 12689)
- 2. **Construction Contracts and Subcontracts for Davis-Bacon Projects must also include the following** (See Labor Standards Chapter):
 - a) Federal Wage Determination with modifications
 - b) Federal Labor Standards Provisions (HUD 4010)
 - Davis-Bacon Act
 - Contract Work Hours and Safety Standards Act
 - Copeland "Anti-Kickback Act"
 - c) Contractors and Subcontractors Certifications (HUD 1421 and 1422)
 - d) OFCCP Subcontractor Notification
 - e) EEO-1 Report
 - f) CC-257 Monthly Utilization Report
 - g) U.S. Department of Labor Notices (jobsite): WH 1321, WH 1462, and OSHA 2203 publications

H. Cost Price Analysis

Two or more responsible vendors must be willing and able to compete for each contract. If only one bid is received, the award recipient must perform a "cost-price analysis" to substantiate the reasonableness of the bid price received.

Outlined below are the procedures for performing a cost-price analysis. Additionally, award recipients should consult their IHFA Compliance Specialist prior to completing a cost-price analysis. Two options are given and either option is an acceptable measure:

- 1. Request from the single bidder a breakdown of the labor costs, material costs, and profit from his/her bid. This information will allow the procuring agency to evaluate reasonableness of the amount of profit built into the bid and the appropriateness of the material and labor costs. The federal regulations do not establish any maximums for these three categories; however, a reasonableness test should be made in relation to the scope of work being bid.
- 2. Ask another contractor that performs the type of work that was bid to provide an estimate of cost. This estimate must be on the letterhead of the contractor and must be in writing.

I. Retainage Requirements

- 1. When a local unit of government enters into a contract in excess of \$100,000 for any public work other than for highways, roads, streets, alleys, bridges and appurtenant structures situated on streets, alleys and highway rights-of-way, a portion of all payments shall be retained until all contracted and subcontracted work has been satisfactorily completed.

2. The retained portion shall be placed in an escrow account selected by mutual agreement between the award recipient, contractor, and subcontractor. The escrow agent may be a commercial bank, savings and loan institution, or IHFA.
3. Any interest income on retained funds should go to the contractor. To determine the amount of retainage to be withheld, the award recipient shall have the choice of:
 - a. Withholding no more than ten percent (10%) of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) completed, and nothing further after that; or
 - b. Withholding no more than five percent (5%) of the dollar value of all work satisfactorily completed until the public work is substantially completed.
4. IHFA recommends also retaining payments on contracts below \$100,000 to ensure quality work. IHFA also recommends that escrow accounts be interest-bearing and that interest income be given to the contractor(s) upon completion and acceptance of the work performed.

J. Bonding Requirements

For any construction or facility improvement contracts or subcontracts exceeding \$100,000, the following is required:

1. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Where bonds are required, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

OR

In lieu of acquiring the payment and performance bonds, IHFA will accept an irrevocable line of credit listing IHFA as the sole beneficiary and equal to (a) the the greater of the IHFA award amount or (b) 25% of the total construction contract. The line of credit must be issued for the entire construction period plus one (1) year following construction completion.

K. Conflict of Interest

Award recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by CDBG or HOME funds. No employee, officer or agent of the award recipient shall

participate in selection, award, or administration of a contract supported by CDBG or HOME funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when one of the following has a financial or other interest in the firm selected for an award:

- a. The employee, officer or agent;
- b. Any member of his or her immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The award recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. However, award recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the award recipient's officers, employees, or agents or by contractors or their agents.

L. Notice of Contract Execution

After you have executed a contract, complete Exhibit E, "Notice of Contract Execution", and submit via mail, fax or email to the IHFA Compliance Assistant. Additionally, this form requests insurance information that is being utilized for this activity. IHFA staff will ensure this form has been submitted prior to paying claims on the your awards.

Required Coverage

Award recipients will be required to provide proof of adequate builder's risk insurance during construction and property insurance following construction for the assisted property throughout the affordability period of the award. The following requirements are listed under each program type:

- For new construction including homebuyer, rental, transitional, emergency shelters, youth shelters and migrant/seasonal farm worker housing activities, builders risk and/or property insurance that includes coverage for work done by the contractors is required throughout the construction period.
- For rehabilitation including homebuyer, rental, transitional, emergency shelters, youth shelters and migrant/seasonal farm worker housing activities, builders risk, contractor liability and/or property insurance that includes coverage for work done by the contractors is required throughout the construction period.
- For owner-occupied rehabilitation contractor liability and/or property insurance that includes coverage for work done by contractors is required throughout the construction period.
- For rental, transitional, emergency shelters, youth shelters, and migrant/seasonal farm worker housing activities, adequate property insurance must be maintained throughout the affordability period. (This is required for all properties assisted through open or closed HOME, CDBG, or Trust Fund awards.)
- For homebuyer and owner-occupied rehabilitation, beneficiary loan documents must stipulate that adequate property insurance be maintained throughout the affordability period.

Policy Requirements

- If a contractor liability policy is used, it must name IHFA as additionally insured.
- If a builders risk policy is used, it must name IHFA as both loss payable and additionally insured.
- If a homeowner policy is used, nothing needs to be added to the policy. Once the lien is placed on the home, the entity placing the lien automatically becomes a loss payable.
- The builder's risk or contractor liability policy can be in the name of the recipient, contractor, owner of the property, subgrantee, or subrecipient.
- The builders risk coverage must be for the replacement value of the property, increasing as appropriate throughout the construction period to the full replacement value at construction completion.
- The value of the contractor liability must be at a minimum for the replacement value of the property. Additionally, if the contractor employs persons, the policy must also include workers compensation.
- The value of the property insurance must be at a minimum for the replacement value of the property.

Codes

**Type of Trade Code:*

- 1 - New Construction
- 2 - Rehabilitation
- 3 - Project Management/Administration
- 4 - Professional
- 5 - Education/Training
- 6 - Architect/Engineering/Appraisal
- 7 - Other

***Racial/Ethnic Codes:*

- 1 - White
- 2 - Black Americans
- 3 - Native Americans
- 4 - Hispanic Americans
- 5 - Asian or Pacific Islander
- 0 - Public Agency/Non-Profit

M. CDBG Disclosure Report

Overview.

A. Coverage. You must complete this report if:

- (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of \$200,000 during the during the fiscal year;
- (2) You are updating a prior report as discussed below; or
- (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by “Recipients” of HUD Assistance): General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

- 1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
- 2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
- 3. Applicants enter the HUD program name under which the assistance is being requested.
- 4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to *either* questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD *and any other source* - that have been or are to be, made available for the project or activity. Non-government sources of funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

N. Retention and Custodial Requirements (HOME)

1. All records pertaining to each fiscal year of HOME funds must be retained for the most recent five (5) year period, except as provided below:
 - a. For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.
 - b. For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.
 - c. Written agreements must be retained for five years after the agreement terminates.

- d. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.
 - e. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- 2. Award recipients must receive authorization from IHFA if they desire to substitute microfilm copies in lieu of original records.
 - 3. IHFA shall request transfer of certain records to its custody from award recipients when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, IHFA may make arrangements with award recipients to retain any records that are continuously needed for joint use.
 - 4. IHFA, HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of award recipients and subaward recipients to make audits, examinations, excerpts, and transcripts.
 - 5. The award recipient must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

O. Retention and Custodial Requirements (CDBG)

- 1. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three (3) years, with the following qualifications:
 - a. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
 - b. Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after final disposition.
 - c. When records are transferred to or maintained by IHFA, the three-year retention requirement is not applicable to the award recipient.
- 3. The retention period starts from the date of the submission of the final expenditure report.
- 4. Award recipients must receive authorization from IHFA if they desire to substitute microfilm copies in lieu of original records.
- 5. IHFA shall request transfer of certain records to its custody from award recipients when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, IHFA may make arrangements with award recipients to retain any records that are continuously needed for joint use.

6. IHFA, HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of award recipients and sub recipients to make audits, examinations, excerpts, and transcripts.
7. Unless otherwise required by law, no federal grantor agency shall place restrictions on award recipients that will limit public access to the records of award recipients that are pertinent to an award except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.

P. Award recipient and Contractor Debarment Procedures (55 IAC Art.6):

1. In order to address potential recurring problems, the State of Indiana has codified statutory proceedings which apply to any federal or state program administered by the State agencies, including IHFA's CDBG or HOME program.
2. A person and/or contractor may be debarred if any of the following have occurred within a reasonable period of time before institution of debarment proceedings:
 - a) Serious or repetitive violation of any federal or state law, or IHFA program regulation or instruction.
 - b) Serious or repetitive failure to perform contractual obligations or carry out representations or warranties to IHFA or to any award recipient under any program administered by IHFA.
 - c) Acts of misconduct indicating a lack of business integrity directly affecting responsibility to participate in IHFA programs, including but not limited to false representation, embezzlement, theft, forgery, fraud, negligent service, bribery, falsification of records, and receipt of stolen property.
 - d) Serious or repetitive violation of any non-discrimination or equal opportunity requirements in connection with any program administered by IHFA.
 - e) Debarment from any agency of the federal government or of any state government.
3. Award recipients and contractors receiving awards or compensation under IHFA's CDBG or HOME program who commit serious or repetitive violations of CDBG or HOME regulations or this *Award recipient Implementation Manual* are subject to such debarment proceedings. Those award recipients and/or contractors who are debarred by IHFA from further participation in IHFA's CDBG or HOME program will be given the right to appeal such debarment.
4. The U.S. Department of Housing and Urban Development (HUD) has also established debarment procedures. Contractors receiving awards or compensation under IHFA's CDBG or HOME program who commit serious or repetitive violations of CDBG or HOME regulations may also be debarred by HUD.

Q. Procurement Exhibits

- A. Informal Price Quotation Form
- B. Formal Price Quotation Form
- C. Verification of Contractor & Subcontractor Eligibility
- D. Federal Contract Provisions
- E. Notice of Contract Execution
- F. CDBG Disclosure Report